

The background features a faint, light-colored illustration of a person's profile and hand, rendered in a minimalist style. The person's head is on the right, and their hand is positioned near their chest. The overall color palette is warm and neutral, consisting of various shades of beige and light brown.

Conscience-based refusal in reproductive medicine

Sanja Cesar

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Abstract

This paper includes explanation of the legal principle of conscience-based refusal in reproductive medicine, analysis of legislation, politics and practice regarding refusal of health care services provision on conscientious grounds in the Republic of Croatia, and indicating the problems in legislation and practice which enables malpractice of this right thus violating the right of each patient to access lawful medical care in a timely manner.

The Republic of Croatia does not have uniformed and standardized procedure of refusing to provide relevant services for reasons of personal conscience, there is no systematic data collection on professionals' refusals to provide standard reproductive services as well as its effect on the quality of health care. Lack of monitoring from the side of the Ministry of Health and tolerance for institutionalized conscience-based refusal represents public-health problem which, finally, results in limited access as well as legal and medical insecurity for women. Women who request abortion are stigmatized in the society, they are facing with disapproval or humiliation in health care facilities, and they can also be exposed to unnecessary waiting periods, additional costs and discrimination. The paper presents legislation and practice of conscience-based refusal in Spain, in which the legislator and the profession are working on development and implementation of standards so that conscience-based refusal could not affect the access and the quality of health care services. In Norway, unlike in Croatia, the dignity and the autonomy of women is in the first place. Conscience-based refusal is not allowed in several European countries, and in Croatia there are some people who question the expansion of conscience-based refusal to professional sphere.

Considering the findings of this research, and in order to regulate conscience-based refusal in a way that it does not hinder the availability of legal health care, it is necessary to adopt and implement standards that would clearly articulate the state's obligation which guarantees that conscience-based refusal in practice does not obstruct access and availability of lawful medical care in a timely manner, to ensure supervision and monitoring of practice as well as to seek responsibility of those who do not respect the standards.

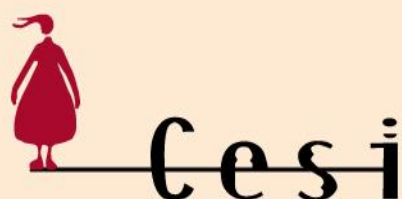
Only individuals have conscience, not legal entities or other collective bodies. Public health care institutions cannot refuse provision of legally prescribed health care services; they are obliged to hire enough staff who is willing to provide all services of reproductive health.

It is necessary to determine under which conditions conscience-based refusal is possible, to regulate the procedures and prohibit conscience-based refusal in situations when patient's life or physical/mental health is endangered.

Conscientious based refusal can be claimed only by providers involved in direct provision of services, it has to be specific and correspond to concrete actions.

In case of conscientious refusal, patients' should get timely service by another provider and therefore have no additional inconveniences and costs. Additionally, women's dignity and their independence in decision-making have to be respected.

The standard curriculum and teaching programs for health care professionals should incorporate information about humane way of notifying patient about professionals' refusals to provide reproductive health service, as well as to ensure that students of medicine learn about performing services that they may need to provide in the case of emergency.



The origin and meaning of conscientious objection and refusal to provide reproductive health care

The legal principle of conscientious objection is not especially elaborated in the majority of legislation in the world, nor it is embedded in the Constitutions and laws, but it is protected as one of the fundamental freedoms within the freedom of thought, conscience and religion. Freedom of thought, conscience and religion falls under human rights and fundamental freedoms guaranteed by the international documents, primarily by The Universal Declaration of Human Rights (UDHR)¹ (Art. 18.), The International Covenant on Civil and Political Rights² (Art. 18.) and The Convention for the Protection of Human Rights and Fundamental Freedoms³ (Art. 9.). International human rights bodies responsible for interpreting treaties and supervising the compliance of states have determined that the freedom to manifest religion or beliefs can be subjected to restrictions. The significance of this human freedom is also reflected in the fact that most democratic countries provide individuals with a legitimate right to conscientious objection, that is allowing him/her not to act according to law or some particular provision that prescribe conduct contrary to his/her conscience. However, conscientious objection in relation to health services is not supported by international human rights frameworks.

Conscientious objection is a matter of permitted act of legal disobedience justified by the conflict between a certain part prescribed by law and the profound religious, moral, philosophical or political convictions of the person who is to perform the act. It originated from the fundamental human rights to freedom of thought, conscience and religious or other belief as well as the right to autonomy, identity, privacy and human dignity.

In order to make conscientious objection legitimate and acceptable, it has to be founded on moral principles of the person who is interpreting legal norms, but also on personal interests. When a person decides to counteraction, he/she is acting consciously and conscientiously and does not consider to act erroneously even if he/she is not right, thus creating the difference between moral and legal sanctions since moral sanctions act internally, while legal sanctions externally. However, moral attitude of a person cannot interfere with the rights of others.⁴

The fundamental premise of human rights is that the articulation of one's own rights does not violate or deny the rights of others. Therefore, the right to conscientious objection is limited to the extent that laws are required in a democratic society in the interests of public

¹U.N. Doc. A/810 (1948).

²U.N. Doc. A/6546 (Conscience-based refusal should be assessed on the basis of its potential discrimination. Justice is a complex and important concept that requires medical practitioners and policy makers to deal fairly with individuals and provide health care services in a non-discriminatory manner, 1966).

³ETS 5; 312 U.N.T.S. 221 (1950).

⁴Šegvić, S., 2007, Legitimacy of Civil Resistance - Some Theoretical Aspects, Book of proceedings of the Faculty of Law in Split, year 44, 2/2007

security, protection of public order, health or moral, or for the protection of the rights and freedoms of other people.⁵

In its original form, conscientious objection refers to refusal of performing mandatory military service because of personal or religious moral objections to killing. However, in the last 40 years, the concept has been used by medical professionals who refuse to perform certain medical procedures that are legal and within the scope of their qualifications and practice with which they personally disagree because they are not in line with their religious, moral and ethical beliefs.⁶

Respecting the patient's autonomy is one of the main principles in practicing medicine, therefore conscience-based refusal should be limited if: it does not respect the autonomy of the patient and impose religious, moral or other attitudes, have a negative effect on patient's health and wellbeing, it is based on inaccurate interpretations or prejudices and if it causes discrimination and inequality.⁷

Conscientious objection in the West derives from Christianity, out of belief that taking human life under any circumstances is evil.⁸ The Catholic Church and the anti-choice movement took over the term "conscientious objection" in a way that includes refusal of performing abortion by medical staff because they consider abortion as murder and their imperative is to do everything to oppose it.

One of the ways in which the Catholic Church strives to protect conscientious is to establish concordats with particular countries related to military service.⁹ However, in the attempt to resist liberal laws which regulate sexual and reproductive rights, the Holy See is trying to regulate the issue of conscience-based refusal in medicine. In this way, the Vatican started conversation with Slovakia¹⁰ in 2003 about signing the concordat that would include abortion, in vitro fertilization, experiments involving human embryos and cells, euthanasia, sterilization and contraception.

⁵ Ibid Article 9, Paragraph 2

⁶ According to some authors (Fiala, Arthur, 2014) conscientious objection is a term falsely co-opted from military and has nothing in common with it. Soldiers are drafted into compulsory service, are relatively powerless, and accept punishment or alternate service in exchange for exercising their CO; while doctors choose their profession, enjoy a position of power and authority, and rarely face discipline for exercising CO. Therefore, CO should more correctly be called 'dishonourable disobedience' because it is a refusal to treat based on personal and non-verifiable beliefs, which is inappropriate and harmful in reproductive health care. It represents an abuse of medical ethics and professional obligations to patients.

⁷ American College of Obstetricians and Gynecologists, 2007, ACOG Committee Opinion No. 385: The limits of conscientious refusal in reproductive medicine, *Obstet Gynecol*;110:1203–8.

⁸ Moskos, C.C., Whiteclay Chambers, J., 1993, *The New Conscientious Objection: From Sacred to Secular Resistance*, Oxford University Press.

⁹ Catholics for Choice, 2010, *In Good Conscience: Conscience Clauses and Reproductive Rights in Europe — Who Decides?* <http://www.catholicsforchoice.org/documents/InGoodConscience--Europe.pdf> (Accessed on October 14, 2016).

¹⁰ Concordat Watch, 2004, *Concordat on the Right to Conscientious Objection: Draft text and Submission Report*. Available at: <http://www.concordatwatch.eu/kb-1227.834> (Accessed on October 16, 2016).

As a reaction to this attempt of expanding conscience-based refusal, the European Union invited The EU Network of Independent Experts on Fundamental Rights¹¹ to examine the proposed treaty. They estimated that this kind of treaty can lead to violation of obligations arising from the International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights and The Convention on the Elimination of All Forms of Discrimination against Women and they demanded that exercising the right to conscience-based refusal cannot deny the rights of others, including the right of all women to receive relevant medical service or counseling without any form of discrimination.¹² The recommendation sends a clear message that the right to a religious conscience-based refusal must be regulated in order to ensure that abortion, when permitted by law, is available to all women. In case of provider's refusal to perform abortion on grounds of conscience, the woman must have an effective legal remedy at her disposal, while physician's responsibility is to promptly refer a woman to alternative and easily accessible health care professional who will provide relevant service, including rural and geographically remote areas. Refusing to provide health care services for reasons of personal conscience must not lead to discrimination and denial of access to the services available to everyone in the country.¹³ Additionally, opinion of aforementioned experts does not refer to abortion issue only, but includes euthanasia, same-sex marriages and the availability of contraception.

In the non-binding Resolution 1763,¹⁴ the Council of Europe demanded from Member States to recognize the right to conscientious objection in lawful medical care, but also to ensure that patients are informed in a timely manner and referred to another health-care provider and receive appropriate treatment. The only country that filed a complaint against the Resolution is Sweden,¹⁵ where the rights of patients have precedence, and the law does not recognize conscience-based refusal.

¹¹E.U. Network of Independent Experts on Fundamental Rights, 2005, Opinion N° 4-2005, The right to conscientious objection and the conclusion by EU member states of concordats with the Holy See, Brussels, EU Commission. Available at: http://ec.europa.eu/justice/fundamental-rights/files/cfr_cdfopinion4_2005_en.pdf (Accessed on December 6, 2016).

¹²Ibid

¹³Ibid

¹⁴PACE Resolution 1763, 2010, The right to conscientious objection in lawful medical care.

¹⁵O'Rourke A., De Crespigny L., Pyman A., 2012, Abortion and Conscientious Objection: The New Battleground, *Monash Law Review*, Vol 38(3): 87-119.

Refusal to provide abortion service on grounds of personal conscience in the Republic of Croatia

In the Republic of Croatia, the freedom of conscience and religion, as well as freedom to demonstrate religious or other convictions are guaranteed by the Art. 40 of the Constitution of the Republic of Croatia¹⁶.

The right to conscience-based refusal is determined by a series of laws related to the health care area. The Art. 20 of the Act on Medical Practice¹⁷ define that a doctor may refuse to provide diagnostic, treatment and rehabilitation services to a patient based on personal ethical, religious or moral beliefs as long as the refusal of care does not conflict with the rules of the medical profession and does not cause permanent damage to the patient's health or life. A doctor is required to promptly inform a patient of their refusal and to make a referral to another appropriate medical professional and inform supervisor or employer about his/her refusal to provide service on grounds of conscience. The conscience-based refusal is identically regulated by the Art. 3, Paragraph 4 of the Nursing Act¹⁸ and Art. 26 of the Dental Care Act¹⁹. Medically Assisted Reproduction Act²⁰ in Art. 38 also contain directives related to conscience-based refusal. The same applies to the Art. 2, Paragraph 15 of the Codex of Medical Ethics and Deontology, Art. 2 of the Code of Ethics of Croatian Nurses, Art. 11 and 12, Paragraph 3 of the Codex of Medical Ethics and Deontology. The Midwifery Act²¹ and the Croatian Law on Pharmacy²² does not contain conscience clause, but midwives can refuse to provide medical services on grounds of conscience based on the Code of Ethics for Midwives²³.

Therefore, by conscientious refusal, the health care provider can refuse the provision of medical service to the patient only if it does not endanger the patient's rights. A physician is obliged to inform the patient in timely manner about his/her personal refusals to provide relevant services and refer her to another physician. A physician cannot refuse to provide medical service based on claims of conscience if it is in conflict with the rules of the profession, if it causes permanent consequences for the health of the patient and if this act is likely to endanger the life of the patient.

¹⁶The Constitution of the Republic of Croatia, Narodne novine (the official gazette), No. NN 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14

¹⁷The Act on Medical Practice, Narodne novine, No. 121/03 and 117/08

¹⁸The Nursing Act, Narodne novine, No. 121/03, 117/08 and 57/11

¹⁹Dental Care Act 121/03, 117/08, 120/09)

²⁰, Medically Assisted Reproduction Act, Narodne novine, No. 86/12)

²¹ Midwifery Act, Narodne novine, br. 120/08 i 145/10

²²Croatian Law on Pharmacy, Narodne novine, br. 121/03, 142/06, 35/08 i 117/08

²³The Code of ethics of midwives , Croatian Chamber of midwives , 2010

Patients also have the right to freedom of thought and beliefs and an entire series of rights guaranteed by the law, so it is necessary to approach them with special care, by respecting their needs and decisions.

According to provisions of the Health Care Act,²⁴ each person has the right to health protection, the possibility of achieving the highest standards of health (Art. 3) and have the right to request, directly or in writing, a health care institution to protect his/her rights in respect of the quality, content and type of health care provided to him/her (Art. 23).

According to Art. 8 of the Act on the Protection of Patients' Rights,²⁵ among other things, the patient has the right to be fully informed about his/her health condition, including medical assessment of the results and outcomes of a particular diagnostic or therapeutic procedure, recommended examinations and procedures and planned dates for their execution as well as his/her right to decide on recommended examinations or medical procedures.

According to Art. 2, Paragraph 12 of the Codex of Medical Ethics and Deontology²⁶ it is a physician's duty to, if treatment requirement exceed his/her abilities, knowledge or skills, make sure that the patient is referred to another physician who is capable to fulfill these needs.

Physicians and health care institutions should be aware that the patient depends on physician in fulfillment of their rights, which puts them in subordinate position and they should not use the power they have in this kind of situations in order to influence the patient's decision-making process.

In Croatia, abortion is a medical procedure that is allowed on request of the pregnant woman until the 10th week of the conception date,²⁷ and can be performed after this period only upon approval of the commission. The procedure can be performed in hospitals which have an organized unit for gynecology and obstetrics as well as other health care facilities that are specifically authorized by the state authority responsible for health care issues. The costs of legally induced abortion are not covered by the health insurance, but it has to be payed from personal funds.

²⁴The Health Care Act, Narodne novine, No. 150/08, 71/10, 139/10, 22/11, 84/11, 154/11, 12/12, 35/12, 70/12, 144/12, 82/13, 159/13, 22/14

²⁵The Act on the Protection of Patients' Rights, Narodne novine, No. 169/04 and 37/08

²⁶The Codex of Medical Ethics and Deontology, Narodne novine, No. 55/08 3

²⁷According to the Act on Health Measures for the Realization of the Right to Freely Decide on the Childbirth that was passed in 1978.

By the decision of the Constitutional court²⁸ in reviewing the constitutionality of the Act on Health Measures for the Realization of the Right to Freely Decide on the Childbirth,²⁹ the request for constitutional review has been rejected, with instructions to the legislator to adopt a new law. The Court assessed that the current legislative solution did not undermine the fair balance between the constitutional right of women and the public interest in the protection of the unborn life as a value and that the ban of the abortion on request until the 10th week would thus violate Art. 22 and 35 of the Constitution of the Republic of Croatia, which contain the principle of inviolability of human freedom and personality, and the right to privacy.

By accepting the Convention on the Elimination of All Forms of Discrimination against Women, the Republic of Croatia confirmed that reproductive right is considered as one of the fundamental human rights.³⁰

According to Art. 12, health care institutions in the Republic of Croatia are obliged to undertake all appropriate measures to eliminate discrimination against women in the area of health care in order to ensure the availability of health services, including those related to family planning.³¹

According to Art. 6, Paragraph 4 of the Act on Gender Equality³² which prohibits discrimination with regard to access to and supply of goods and services, every woman has the right to decide freely on her sexual and reproductive rights and health, including the right to free decision about the number of children and the right to legally induced termination of pregnancy under the conditions prescribed by law. According to the interpretation of Gender Equality Ombudsperson, “any restriction regarding access to abortion service, which is a legal medical treatment available exclusively to women for biological reasons, constitutes a direct sex discrimination against women in terms of access to services and is therefore prohibited by the Directive 2004/113/EC and the Gender Equality Act.”³³

²⁸The decision of the Constitutional court of the Republic of Croatia number U-I-60/1991 and other from February 21, 2017, and separate opinion issued in Narodne Novine, No. NN 25/2017

²⁹The Act on Health Measures for the Realization of the Right to Freely Decide on the Childbirth, Narodne novine, No. 18/78

³⁰The Convention precisely defines that the right to free decision-making about childbirth includes the right to decide when and how many children are born, prohibits the state to make such decisions and the duty of the state to provide access to information, education and resources in order to make the decision which derives from this right.

³¹UN Convention on the Elimination of All Forms of Discrimination against Women, 2009, Zagreb: Governmental Office for Gender Equality of the Republic of Croatia.

³²The Act on Gender Equality, Narodne novine, No. NN 82/08.

³³Gender Equality Ombudsperson of the Republic of Croatia, 2014, Research on Practices of Healthcare Institutions in Croatia to Ensure Access to Legally Induced Abortion. Available at:

www.prs.hr/attachments/article/1555/04_ISTRA%C5%BDIVANJE%20-%20Rad%20studentskih%20pravobraniteljica.pdf

(Accessed on November 21, 2016)

If abortion is legal, it should be available

Conscience-based refusal for practitioners who, due to personal ethical, moral and religious reasons, refuse to participate in particular medical procedure is legally guaranteed to any individual, whereat it is necessary not to jeopardize or exclude the rights of other persons. In order to ensure that these rights of providers and patients are exercised simultaneously, it is important to determine precise procedures of health care institutions and ensure that obligation of referring the patient to alternative and accessible health care provider is being respected.

In Croatia, the standardized procedure of providing information about the termination of pregnancy, a gynecological examination of a woman who require abortion or the procedure of refusing to perform relevant services based on claims of personal conscience is not prescribed by the Ministry of Health, but it varies depending on the particular hospital. Complete autonomy of health care institutions regarding abortion service, including the price of the abortion and the lack of monitoring by the competent ministry poses a public-health problem because ultimately it results in limited availability and legal and medical insecurity for women.

A research conducted by the Gender Equality Ombudsperson (2014) showed that, out of 30 health care institutions that are authorized to provide abortion service, legally induced abortion can be performed in 24 of them, while in other six it is not possible due to conscience-based refusal of all health care workers. A total of 375 health care workers that are specialized for performing induced termination of pregnancy works in aforementioned institutions; 167 of them (45%) performs that procedure, while the rest of them do not due to conscientious refusal.³⁴

Conscience-based refusal is tightly connected to religious and moral views of an individual; this is exclusively personal decision that cannot be expanded to medical institution as such. Each medical institution which participates in the state's health care system which is qualified and legally obliged to provide abortion service has a legal obligation to provide women with the access to this type of reproductive health care service. It is up to institution's administrative bodies to establish a system that will guarantee woman to have effective access to termination of pregnancy at all times according to conditions prescribed by the law. In case they are not capable to organize that, the Ministry of Health is bound to undertake all measures³⁴ within its competence to ensure that a particular institution fulfills

³⁴Ibid

its legal obligation. The conscience clause cannot serve as a basis for the abolition of abortion rights. If a hospital is public institution funded by the state budget, it would be difficult to justify the right to conscience-based refusal if it stands on the path of exercising women's rights. The admissibility of professionals' refusals to provide standard reproductive services strengthens in case of an employee of the hospital which is funded by religious institutions.³⁵

If some health care institutions do not perform abortion on request and/or the majority of physicians refuse to provide standard reproductive services, women do not have the access to medical protection and their right to health is violated. Women who live in smaller towns, in areas with small number of medical institutions and those who live in poor economic conditions are particularly affected. This was confirmed by the European Committee for Social Rights, when they determined that Italy³⁶, due to a large number of professionals who refuse to provide abortion, limits the women's access to safe abortion and thus violate their rights as well as the article of the European Charter that guarantees the right to health.³⁷ According to data from the Ministry of Health, the number of physicians who refuse to provide abortion service has increased continuously; in 2013, about 70% of gynecologists and more than 46% of non-medical staff has refused to provide medical care to women who requested abortion.³⁸ Women that need abortion are often forced to travel to other regions, abroad or are subjected to illegal procedures which carry significant risks for women's health and wellbeing. Women who require access to abortion services are in more unfavorable position than those who are requiring access to other forms of medical treatments. Therefore, the Council of Europe³⁹ determined that discrimination of women on the basis of health status, territorial position and socio-economic status exists.

Physicians are obliged to use their knowledge and skills for the benefit of the individual and the community, acting in the best interest of the patient, respecting the autonomy and dignity of her right to information, education, informed choice and providing health care in accordance with the best medical practice and medical achievements. Physicians' actions should respect woman's autonomous decisions, and if she is incapable of making decisions,

³⁵Rittossa, D., 2005, Controversy about the right to abortion in the Republic of Croatia, Book of proceedings of the Faculty of Law in Rijeka, vol. 26, No. 2.

³⁶Resolution CM/ResChS(2014)6 International Planned Parenthood Federation – European Network (IPPF EN) v. Italy Complaint No. 87/2012 Adopted by the Committee of Ministers on April 30, 2014) and Resolution CM/ResChS(2016)3 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013 (Adopted by the Committee of Ministers on July 6, 2016)

³⁷Abortion is legal in Italy since 1978, but because physicians have the possibility to refuse the procedure, it is almost impossible to put it into practice. Abortion availability is the lowest in Southern Italy and, in some regions, it is impossible to terminate pregnancy voluntarily and to find a doctor who will perform abortion service. The Catholic Church has major role in this situation since it encourages hospitals to employ gynecologists and obstetricians who oppose the right to choice.

³⁸Relazione Ministro Salute attuazione Legge 194/78 tutela sociale maternità e interruzione volontaria di gravidanza - dati prelim. 2014 e dati defin. 2013, the Ministry of Health: http://www.salute.gov.it/imgs/C_17_pubblicazioni_2428_allegato.pdf

³⁹Ibid

they should primarily act in the best interests of the woman.⁴⁰ Decisions of the European Court of Human Rights indicate that, in states where abortion laws are restrictive, legally permitted services to women are not available due to conscience-based refusal.

In the case of *R. R. v. Poland*,⁴¹ The European Court of Human Rights ruled that the patient R.R. rights were violated under Art. 8 (the right to respect private and family life) when her timely access to prenatal diagnosis was denied due to physician's conscience-based refusal. The Court concluded that the Art. 9 - Freedom of Thought, Conscience and Religion does not protect all actions motivated by faith or belief. The Court established that, in countries where the national legal system allows providers to conscientiously refuse to provide certain services, states are obliged to organize health services in such a way as to ensure that such refusals do not prevent women from obtaining reproductive health services to which they are legally entitled.⁴²

Several UN committees have considered the issue of conscience-based refusal in the context of the provision of services for the protection of reproductive and sexual health.⁴³ They have established valuable standards by which the States are required to ensure a balance between the protection of the right to freedom of expression and women's right to access legally permitted and safe reproductive health services.⁴⁴

Prevalence and scope of application

It is hard to discuss prevalence, the reasons and motivation for conscience-based refusal due to lack of unified definition, analysis and reliable data as well as inability to compare the results of different studies.⁴⁵ Researches does not always show clearly is it intent or actual behavior, and studies are often made on a non-representative sample. The most reliable data come from countries where there are registrars of physicians who are refusing to perform particular medical procedures.⁴⁶

⁴⁰ FIGO Committee for the Ethical Aspects of Human Reproduction and Women's Health, 2015, Ethical Issues in Obstetrics and Gynecology.

⁴¹ No. 27617/04, ECHR 2011 (decision)

⁴² Ibid

⁴³ The Committee for Human Rights, the Committee for the Elimination of All Forms of Discrimination against Women, the Committee on Economic, Social and Cultural Rights.

⁴⁴ Center for reproductive rights, 2013, Conscientious Objection and Reproductive Rights: International Human Rights Standards. Available at:

www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/_Conscientious_FS_Intro_English_FINAL.pdf (Accessed on October 12, 2016)

⁴⁵ Chavkin, W., Leitman, L., Polin, K.: for Global Doctors for Choice, 2013, Conscientious objection and refusal to provide reproductive healthcare: A white paper examining prevalence, health consequences, and policy responses *Supplement to International Journal of Gynecology & Obstetrics, Volume 123, Supplement 3 Conscientious objection to the provision of reproductive healthcare.*

⁴⁶ Ibid

Large number of countries are allowing conscience-based refusal in medicine; according to estimates, prevalence is around 10% according to the study conducted in Great Britain, up to 70% of gynecologists registered in Italy and around 80% in Portugal.⁴⁷

In the Republic of Croatia, conscience-based refusal has a high incidence among physicians, but there is no standardized procedure on the registration of conscience-based refusal, so some physicians and medical staff sign forms, some of them give verbal statement and there is no record whatsoever. Therefore, it is not clear how the hospitals can be adequately organized to make the service available.⁴⁸

Conscientious refusal in reproductive medicine is most often claimed by the gynecologists and nurses, but anesthesiologists, family medicine doctors, pharmacists and paramedical staff employed in health care facilities: housekeepers, chefs, administrative staff are also refusing to perform their duty due to conscience.

In some countries, regulations determine which health care professionals can refuse to provide care on grounds of conscience, for which services and under which conditions. Thus, in Great Britain, supporting staff and persons conducting administrative jobs cannot be conscientious objectors.⁴⁹ In Spain, conscience-based refusal is allowed only to persons directly involved in the termination of pregnancy procedure and they are obliged to provide medical care before and after the termination of pregnancy.⁵⁰ Similar regulations apply in Italy as well.⁵¹

In the Republic of Croatia, health care practitioners have the right to deny “diagnostics, medical treatment and patient rehabilitation”, and to refer the patient to alternative health care provider.⁵² Provisions established in this way allow broad interpretation and thus are not clear enough, but they leave room for abuse of conscience-based refusal to the detriment of women. Conscience-based refusal is defined by various laws and/or ethical codes, so it is not precisely determined who have the right to refuse to provide relevant service on conscientious grounds and for which service and procedure. For these reasons, a midwife at

⁴⁷Ibid

⁴⁸Hodžić, A. and Bijelić N., 2014, Grey Area: Abortion Issue in Croatia, Available at: http://www.cesi.hr/attach/p/prijelom_pitanje_abortusa_hr.pdf (Accessed on November 12, 2016)

⁴⁹Janaway v. Salford Health Authority, 1988 (UK).

⁵⁰Ley Orgánica 2/2010, de 3 de marzo, de Salud Sexual y Reproductiva y de la Interrupción Voluntaria del Embarazo. [Law of Sexual and Reproductive Health and Abortion] (2010), Arts.17(4) and 14(a) (Spain)

⁵¹Law No. 194 of May 22, 1978 on the social protection of motherhood and the voluntary termination of pregnancy, Gazz. Uff., Part I, 22 May 1978, No. 140, 3642-46 (Italy).

⁵²The Act on Medical Practice, Narodne novine, No. 121/03 and 117/08

the Croatian Pride hospital in Knin was dismissed⁵³ because she refused to assist in the abortion due to the exercise of conscientious. The Croatian Chamber of Midwives emphasized on that occasion that the Act does not foresee the possibility of conscience-based refusal for midwives, but it is envisaged in the Code of Ethics of Croatian Midwives⁵⁴ (Večernji list, 2013). Due to media exposure of the whole case and the pressures, the hospital annulled the decision on dismissal and the midwife returned to work two months later.

A case of a pharmacist, owner of a pharmacy, caused media attention a couple of years ago; she refused to issue a contraceptive prescribed by a doctor on claims of personal conscience. The Gender Equality Ombudsperson got involved and instructed that the work in the pharmacy must be organized in such way that there must be at least one employed person who will provide relevant service.⁵⁵

Instruction for pharmacists regarding conscience-based refusal state that “every pharmacist, who considers that his/her moral or religious beliefs is preventing him/her to conduct particular pharmacy service, has to bring fourth and explain the issue to the responsible persons or relevant bodies in the pharmacy (institution) where he/she works and to refer patients to other service providers”⁵⁶ and emphasized that “the patients are the first concern”. The instruction allows conscience-based refusal in case of emergency contraception, but also regarding hormonal contraception.

In the case of pharmacists who refused to sell contraceptives,⁵⁷ The European Court interprets that the Art. 9 of the Convention does not protect “every act motivated or inspired by religion or belief” and thus confirming the decision of the court in France.⁵⁸ The European court adds that “as long as the sale of contraceptives is legally permissible and possible only with medical prescription in the pharmacy, conscientious objectors cannot give advantage to their religious beliefs and impose them on other people as an excuse for denying to sell such products, because they can manifest their beliefs on many different ways, beyond professional sphere.”⁵⁹

⁵³She was dismissed on the basis of Art. 107 of the Labor Act, due to a violation of her duty by refusing to perform her job.

⁵⁴The Code of Ethics of Croatian nurses, The Croatian Chamber of Midwives, 2010.

⁵⁵She concluded that "denying the patient the issuance of prescribed contraceptives was contrary to Art. 6, Para. 4 of the Gender Equality Act, which for women has particularly harmful effects in practice as they are denied free decision-making on sexual and reproductive rights. Such conduct also violated Council's Directive 2004/113/EC on December 13, 2004 on the implementation of the principle of equal treatment for men and women in access to goods and provision of services."

⁵⁶Instruction for conducting pharmacy services that may have an impact on moral and religious beliefs, Croatian Chamber of Pharmacists, 2015

⁵⁷Pichon and Sajous v. France, 2001, App. No. 49853/99, ECHR 2001-X, decision on admissibility.

⁵⁸Decision state that the ethical or religious principles are not justified reasons for refusing to sell contraception.

⁵⁹Ibid

The Association of American Physicians in health care system allows conscience-based refusal, but requires that the patient must be immediately redirected to another pharmacy, and similar regulations also apply in the UK.

Conscience-based refusal in cases of performing legal and standardized medical procedures often occur in the domain of reproductive medicine related to abortion (abortion on women's request, but also abortion due to inherent anomaly or fetal abnormalities), emergency contraception, informing patients and prescribing hormonal contraception, insertion of the intrauterine device (IUD) and performing sterilization, prenatal diagnosis of fetal abnormalities and medically assisted fertilization.

In addition to refusing to do the actual procedure, many physicians refuse to carry out standard health measures before the procedure (eg. analgesia, anesthesia) as well as to provide care after the induced abortion. Nurses and supporting staff also often refuse to participate in providing care to women who have abortion.

In the case *Greater Glasgow Health Board v. Doogan and Wood*⁶⁰ in Great Britain, it was decided that only those persons involved in the procedure can to exercise conscientious refusal and that expanding this protection to services that are not directly connected to abortion would be at the expense of women who want to terminate pregnancy and health care professionals who provide such service.

On the other hand, conscience-based refusal in the USA is expanding and compounding in the area of health care and education by extending the religious autonomy of the individual and against the public interest.⁶¹ It began after the decision of the Supreme Court in the case of *Roe v. Wade*,⁶² after which a conscience clause was introduced and has since expanded to other areas.⁶³

⁶⁰Two Catholic midwives have refused to be supporting staff during the abortion. After winning the court case in Edinburgh, the UK's Supreme Court ruled that the right to conscience-based refusal does not apply to department coordinators and supporting staff.

⁶¹Marshall, C., 2013, The Spread of Conscience Clause Legislation, *Human rights Magazine* Vol. 39 No. 2

⁶²*Roe v. Wade*, 410 U.S. 113, 1973

⁶³In Missouri, a law has been passed under which a student must not be compelled to perform or participate in tasks that are against his/her religious beliefs. Similar laws exist in most other states, and the most extreme is in New Hampshire which allows parents to claim conscientious refusal about any material in the curriculum for any reason until they find a reasonable and approved alternative and are willing to pay for any additional costs. The state of Virginia have expanded conscience-based refusal to private companies, allowing private agencies for adoption of children and foster care, while some states allow students of psychology and social work to refuse to provide counseling to a client if the counseling objectives are in conflict with his/her religious and moral attitudes and beliefs.

Abuse of conscience-based refusal

Conscience-based refusal in practice can lead to limitation of the right to medical protection and violation of women's human rights. It is expected from women in the society to take over maternal role, so when requesting abortion, they are often stigmatized and they are facing disapproval or humiliation in health care institutions, and sometimes are even forced to give birth. Due to conscience-based refusal, women can be exposed to unnecessary waiting periods as well as uncertain procedures in higher stages of pregnancy, additional costs and discrimination.⁶⁴

In reproductive medicine, studies and numerous cases⁶⁵ show that the reasons for denying of particular services can be different from deeply embedded religious and ethical convictions. In most countries, regulations require out of physicians who are conscientious objectors to refer the patient to other physician who will provide a particular medical service. However, the practice showed that sometimes medical workers claim that providing information or referring the patient to another physician is contrary to their conscience and sometimes abuse their position by providing false information, denying providing referral until it is too late for abortion.⁶⁶

Some researches⁶⁷ showed that the part of medical staff is trying to avoid provision of services that are stigmatized, is afraid of negative consequences if performing abortions and want to avoid discrimination and stigmatization. Health care providers know that, if they decline to perform termination of pregnancy stating conscience-based refusal as a reason, they will not have the consequences such as complaints or disciplinary proceedings against them. These kinds of situations do happen and are extremely dangerous for patients in countries where restrictive laws are in force and where women are not getting timely conducted diagnostics, necessary treatments and adequate care.

Researches showed that physicians in Poland hesitate with the execution of legally permitted abortion, not because conscience-based refusal, but because politically hostile atmosphere.⁶⁸ Poland has one of the most restrictive laws in the EU; several publicly known cases have been brought before the European Court because women have been denied adequate lawful

⁶⁴Fiala, C. and Arthur J.H., 2014, „Dishonorable disobedience“ – Why refusal to treat in reproductive healthcare is not conscientious objection, *Woman – Psychosomatic Gynecology and Obstetrics*.

⁶⁵Ibid

⁶⁶Ibid

⁶⁷Ibid

⁶⁸Mishtal J., 2006, *Contradictions of Democratization: The Politics of Reproductive Rights and Policies in Post socialist Poland*, Dissertation submitted to the Faculty of the Graduate School of the University of Colorado in partial fulfillment of the requirement for the degree of Doctor of Philosophy, Department of Anthropology.

treatment due to worries about the effects on the fetus, which ultimately resulted in health impairment,⁶⁹, sepsis and death⁷⁰.

In Ireland in 2012, prolonging the completion of spontaneous abortion in the 17th week of pregnancy due to the presence of fetal heartbeat led to the death of Savita Halappanavar⁷¹.

The question of conscience based refusal in Croatia is a segment of the broader controversial abortion debate between the anti-choice Catholic and neoconservative movements on one side, and pro-choice and feminist movements for full autonomy and respect for the women`s sexual and reproductive rights, on the other. We are witnesses that a part of gynecologists, who openly oppose to abortion and exercise conscientious refusal by using political-ideological arguments, are requesting the adoption of laws that will make it more difficult for women to access abortion. The gynecologist, the president of the Health Care Committee of Croatian Democratic Union says: “It is not normal that democratic Croatia is still a slave of law passed during the time of totalitarian regime of the former state. Therefore, we propose changing the law on the right to abortion.”⁷²

According to the results of research conducted by the Gender Equality Ombudsperson,⁷³ a part of medical institutions does not perform abortions due to conscience-based refusal of all physicians in the hospital. The situation has changed after the Ministry of Health in 2015 instructed hospitals on that matter, but after the election and triumph of conservative political options, it appeared that again the same hospitals are not performing terminations of pregnancy.⁷⁴

Professionals’ refusals to provide health care on grounds of conscience and the stigma that follows abortion, created a narrow circle of doctors who profit from this situation. In Croatia, there are cases of physicians who refuse to carry out abortion for reasons of conscience during their working hours, while performing abortions privately and keeping the money to

⁶⁹In the case of *Tysiack v Poland*, when abortion was denied to pregnant women who had a severe myopia and where physicians predicted that pregnancy could seriously impair the sight, the European Court ruled that fundamental human rights were violated. After the birth, a single mother with three children could not see items at a distance of more than 1.5 meters and received a disability pension.

⁷⁰Case of *Z v. Poland*, Application no. 46132/08, Judgment (Merits and Just Satisfaction).

⁷¹Berer M., 2013, Termination of pregnancy as emergency obstetric care: the interpretation of Catholic health policy and the consequences for pregnant women: An analysis of the death of Savita Halappanavar in Ireland and similar cases, *RHM* 2013;21(41): 9–17.

⁷²T.T., 2014, The Croatian Labourists – Labor Party: In a secular state, as if the laws were written by the Church; Read what the other parties say about abortion. Available at: <http://www.index.hr/vijestina/clanak/laburisti-u-sekularnoj-drzavi-kao-da-zakone-pise-kaptol-procitajte-i-sto-ostale-stranke-kazu-o-pobacaju/779292.aspx> (Accessed on September 13, 2016)

⁷³Ibid

⁷⁴Telephone Research conducted by CESI, March 2016

themselves.⁷⁵ In smaller environments, often all physicians claim the right to exercise conscientious refusal, so women are forced to come to them privately.

To some, it is much easier to deny service based on claims of personal conscience to disguise the real reason, which is that it is easier to decline the provision of service women requires than to fulfill their professional and ethical duty of providing the service of lawfully safe abortion.⁷⁶

When informing the patient about his/her reasons for refusing to provide requested health protection, medical worker cannot use it for imposing his/her beliefs upon the patient. However, it is not uncommon that, when a patient becomes acquainted with the reasons for refusing to provide health care services, a physician presents his/her religious or other attitudes, opinion, judgment or prejudice instead of scientifically based facts. Some physicians use conscience-based refusal in order to impose their own attitude which can be seen from a case that appeared in the media, when a physician refused to prescribe “a day after pill” to an 18 years old girl, telling her that she will destroy her life with it and that this medication have abortive effect, thus providing her with false information.⁷⁷

The consequences of stigmatization can be even more drastic, where abuse and violence may occur. In the United States, arson and throwing bombs at abortion clinics began to happen in 1976. At the beginning of the 1990s, extremists who fought against abortion concluded that killing of people who provide such services was the best way to prevent abortion. In that period, 11 people were killed and 26 attempted killings were reported.⁷⁸

Every physician has the right to refuse abortion on conscientious grounds, but this right is sometimes misused. Whether physicians use it as a religious or ethical principle, whether it is used as a political declaration or because they can charge this service outside the hospital system, the cost is in any case paid by women who need health care services.

⁷⁵In 2010, five doctors of the Department of Women's Diseases and Obstetrics in Varaždin Hospital were arrested, suspected of position misuse and falsifying the documents, that is, they committed illegal abortions and double-charged them, both from the Croatian Institute for Health Insurance and from the patient. According to Jutarnji List newspaper, 13 persons from Varaždin, Bjelovar and Koprivnica area who committed a total of 101 criminal offenses are suspected of the same offense, of which 58 are criminal offenses of misuse of position and authority, 13 incitement to misuse position and authority, 29 counterfeiting official documents and one criminal offense of unlawful interruption of pregnancy.

⁷⁶Faúndes, A., Duarte G.A., Duarte M.J., 2013, Conscientious objection or fear of social stigma and unawareness of ethical obligations, *Supplement to International Journal of Gynecology & Obstetrics, Volume 123, Supplement 3 Conscientious objection to the provision of reproductive healthcare.*

⁷⁷The Annual Report of the Gender Equality Ombudswoman for 2013. Available at: www.prs.hr/attachments/article/997/lzvjesce%20o%20radu%20za%202013%20Pravobraniteljice%20za%20ravnopravnost%20spolova.pdf (Accessed on November 21, 2016)

⁷⁸National abortion federation, 2016, Violence Statistics & History. Available at: <https://prochoice.org/education-and-advocacy/violence/violence-statistics-and-history/> (Accessed on December, 12, 2106)

International Federation of Gynecology and Obstetrics (FIGO) points out that health care providers have a right to respect for their conscientious convictions in respect both not to undertake and to undertake the delivery of lawful procedures⁷⁹. FIGO supports the right to conscience-based refusal in reproductive medicine, but points out the following: physicians have ethical obligation, at all times, to work for the benefit, and not at the expense of the patient they provide care to; they have to declare publicly the professional services they are refusing to perform on the basis of conscience; they are obliged to inform the patient about all treatment options and respect their autonomy, together with the right of the patient to timely service.

Physicians and other health care providers have different beliefs about certain medical procedures and it is questionable not to recognize that the ones that are undergoing abortion are deciding on that act due to their own conscience.⁸⁰ Not enough acknowledgment goes to those who are motivated by their conscience to provide reproductive health care services and care for patients beyond the adherence to religious doctrines or their own religious interests.

Therefore, in discussions about conscience-based refusal in medicine, it is necessary to review terminology that is used. Equalizing conscience with refusing to perform abortion is contributing to the stigmatization of persons who perform abortion. If a physician who is performing abortion cannot say that he/she is doing it in “good conscience”, as it is said by those who refuse to perform abortion, they can be discouraged in providing medical care for women who choose abortion.⁸¹

There is an opinion that conscience-based refusal is contrary to the promises the physician gave to the individual and the society when he/she is refusing to fulfill its obligations to the patient, for any reason. The society gave the medical profession a monopoly in providing health care, and therefore, by refusing to provide protection due to conscience to the extent that it hinders or obstructs access to legal medical assistance is representing imposition of own conscience on patients and the society⁸². Many professional medical organizations emphasize the primacy of medical professional and ethical obligations towards the patient and the secondary importance of the personal conscience-based refusal.

⁷⁹FIGO, 2015, Resolution on Conscientious Objection.

⁸⁰Harris L.H., 2012, Recognizing conscience in abortion provision, *N Engl J Med* 2012;367(September):981—3.

⁸¹Fiala, C. and Arthur, J.H., 2014, „Dishonorable disobedience“ – Why refusal to treat in reproductive healthcare is not conscientious objection, *Woman – Psychosomatic Gynaecology and Obstetrics*.

⁸²Ibid

The International Federation of Gynecology and Obstetrics (FIGO) and the World Health Organization (WHO), in their guidelines for safe abortion (Safe abortion: technical and policy guidance for health systems, 2012), as well as the international medical and public health community have agreed on principles related to the management of conscientious refusal to reproductive healthcare provision.

Non-binding recommendations for service providers which represents professional standards of care include the following:⁸³

- ❖ Service providers have the right to exercise conscientious refusal as well as the right not to suffer discrimination on the basis of their beliefs.
- ❖ The primarily conscientious duty of health care providers is to provide treatment, or to provide benefit and prevent harm to patients; conscience-based refusal is secondary to this primarily duty.
- ❖ Moreover, the following safeguards must be in place in order to ensure access to services without discrimination or undue delays:
- ❖ It is professional duty of health care providers to follow scientifically and professionally determined definitions of reproductive health services, and not to misrepresent them on the basis of personal beliefs.
- ❖ Patients have the right to be referred to practitioners who do not object for procedures medically indicated for their care.
- ❖ Healthcare providers must provide patients with timely access to medical services, including the provision of information about the medically indicated options of procedures for care, including those that providers object to on grounds of conscience.
- ❖ Providers must provide timely care to their patients when referral to other providers is not possible and delay would jeopardize patients' health.
- ❖ In emergency situations, providers must provide the medically indicated care, regardless of their own personal objections.

Regulation of conscience-based refusal in Spain

In Spain, the Constitution regulate only conscience-based refusal in the army⁸⁴, but the Parliament has the authority to regulate this issue and enable the exclusion of persons from

⁸³Ibid p. 49

⁸⁴Art. 30.2 of the Constitution.

certain legal obligations, under condition that he/she can prove the existence of dilemma between legal obligations and his/her moral beliefs.⁸⁵

Expansion of conscientious refusal to professional sphere is questionable for some, because involvement of the person in this professional area and choice of specialization does not represent obligation, but it is a matter of their personal choice, as opposed to conscientious refusal that is exercised in relations to current law that is applicable to everybody.⁸⁶

Abortion in Spain has been decriminalized in 1985 and it is permissible in exactly defined cases, while family planning and abortion in this period were not included in public health care system. The rate of physicians who refused to perform termination of pregnancy was very high in public hospitals. When it comes to abortion availability, women's organizations and women's movement, in cooperation with left-wing authorities, have done so much in this period in order to open private clinics where women can terminate pregnancy. The Catholic Church, together with political and economical conditions has a great impact on availability of abortion in different regions.⁸⁷

Upon adopting the new Act in 2010,⁸⁸ the legislator itself pointed out failures made in the implementation of laws that have led to insecurity and practice which is detrimental to legal certainty as well as serious consequences for women's rights and health.

According to organic law from 2010 which regulates issues of sexual and reproductive health and voluntarily termination of pregnancy, abortion is allowed up to the 14th week of pregnancy with obligation to inform the woman about her rights and available service, alongside mandatory waiting period of three days between informing and the actual abortion.

The attempt of conservative government to pass a new restrictive law on abortion in 2014 had failed, but there has been a change to the existing law which introduces compulsory consent of parents in situations where a minor requests for termination of pregnancy.⁸⁹

Although public health institutions are obliged to adopt the measures which guarantee provision of termination of pregnancy services according the law, practice reveals numerous problems.

⁸⁵ Opinion of the Spanish bioethics committee on conscientious objection in medical care, 2011. Available at: http://assets.comitedebioetica.es/files/documentacion/en/Conscientious%20objection%20in%20medical%20care_CBE_2011.pdf (Accessed on November 14, 2016)

⁸⁶ Ibid p. 9

⁸⁷ Cambronero-Saiz, B., Ruiz Cantero, M.T., Vives-Cases, C., Carrasco Portin M., 2007, Abortion in Democratic Spain: The Parliamentary Political Agenda 1979–2004, *Reproductive Health Matters* 2007;15(29):85-96.

⁸⁸ Organic Law 2/2010, of March 3, on sexual and reproductive health and voluntary abortion.

⁸⁹ The Guardian, 2014, „Spain abandons plan to introduce tough new abortion laws“. Available at: <http://www.theguardian.com/world/2014/sep/23/spain-abandons-plan-introduce-tough-new-abortion-laws> (Accessed on December 14, 2016)

Abortion for women in public institutions is free, but it is not easily accessible due to long waiting lists and conscience-based refusal requested by physicians. Spain is mostly relying on private health care, and the same applies for the abortion. Only 2,6% of the voluntary termination of pregnancy was performed in public institutions in 2011,⁹⁰ and 10% of abortions⁹¹ was conducted in accredited public institutions in 2014. Private clinics, which also perform abortions and where around 90% of voluntary termination of pregnancies is conducted, in certain cases can perform abortion with financial support of the National health system.

According to the Law, conscientious refusal can be exercised only by health service providers directly involved in voluntary termination of pregnancy, if their refusal of performing the abortion does not diminish access or quality of care. Conscience-based refusal is a personal decision; it has to be declared in advance and delivered in writing. Nevertheless, physicians need, at any time, to provide adequate medical assistance and care to women who request that service, before and after abortion. In case the health care institution is not able to conduct the procedure as soon as possible, termination of pregnancy is possible to perform in other accredited center anywhere in the country, and health insurance will cover the costs.

Some consider that conscience-based refusal is not defined clearly enough which can be seen from lawsuits and discussions conducted. Regulations that are trying to additionally arrange conscience-based refusal issue have been adopted at regional level.⁹² The law does not sufficiently explain what it means to be directly involved in performing abortion and what is the real meaning of terms access and quality of health services. The controversy was also caused by the proposal to create a register of conscientious objectors. According to the Court's opinion, only individual written type of conscience-based refusal to superiors can interfere with organization and provision of public health services, as well as that the registry is necessary. It is up to judiciary and the administration to interpret these conditions and to align them with the right to freedom of conscience.⁹³

Recently, discussions have been led whether physicians, when refusing to perform reproductive health care services for reasons of personal conscience, can deny information

⁹⁰CEDAW Committee Consideration of reports submitted by States parties under article 18 of the Convention 7th and 8th periodic reports of States parties to be presented in 2013: Spain. Available at: www.refworld.org/docid/53c7da6a4.html (Accessed on December 4, 2016)

⁹¹The Ministry of Health, Social Welfare and Equality. Available at: http://www.msssi.gob.es/profesionales/saludPublica/prevPromocion/embarazo/tablas_figuras.htm (Accessed on December 6, 2016)

⁹²Bertelsen, S., 2013, Conscientious Objection of Health Care Providers: Lessons from the Experience of the United States, *Notre Dame Journal of International & Comparative Law*: Vol. 3: Iss. 1, Article 1.

⁹³Ibid

and referral of women to places where they can terminate pregnancy. Verdicts of the courts vary; while some ruled that it is physician's duty, as an employee in public service, to provide adequate health care and the obligation of providing information is above conscience-based refusal⁹⁴, the others in similar cases ruled that decision to conscience-based refusal also includes possibility to refuse to provide information and referral of the patient to other physician.

Spanish Bioethics Committee⁹⁵ suggested recommendations for regulation of conscience-based refusal related to performing legal medical care, in order to ensure provision of services determined by law at any time. The Committee points out that conscience-based refusal must be exercised by individual persons and that this right cannot be exercised in a collective or institutional manner. Private hospitals can exclude the objected service from their contract. The regulation determines the scope of conscience-based refusal, and the person exercising the right of conscience-based refusal must be involved in the service.

The hospital must have the necessary information about conscientious objectors in order to ensure unhindered work of the hospital and the necessary health care provisions. Subsequent objection" and reversible conscientious objection are accepted. Conscience-based refusal has to be specific and refer to specific actions, while an alternative service has to be established. This service would be established to avoid any imbalance in the provision of medical services. It must be possible to check the coherence of action of the conscientious objector with his/her beliefs within his/her overall activity in the medical profession.

Dignity and autonomy of women in Norway in the first place

In Norway, abortions are conducted in public hospitals and are paid completely by the state. The law⁹⁶ has been passed in 1975, and from 1978,⁹⁷ abortion on request is allowed in the first 12 weeks of pregnancy. In this period, pregnant women are referred to abortion by the general medical practitioners, although they can contact the hospital directly, while termination of pregnancy can be performed in any institution that has the license. Between the 13th and the 18th week, abortion is permitted with the consent of the Board due to

⁹⁴At the beginning of 2011, the judge dismissed a family doctor's request to deny referral to a pregnant woman who wanted to terminate her pregnancy due to conscience. Doctor in Spain Can Refuse Patients Abortion, 2015, Spain News.

⁹⁵Ibid

⁹⁶Law No. 50 of June 13, 1975 on the termination of pregnancy, as amended through June 19, 2009. Available at: <https://www.hsph.harvard.edu/population/abortion/norway.abo.htm> (Accessed on December 16, 2016)

⁹⁷Ministry of Health and Care Services, 2000, About the Abortion Act. Available at: <https://www.regjeringen.no/no/dokumenter/about-the-abortion-act/id419252/> (Accessed on November 23, 2016).

medical, eugenic, criminal, humanitarian or social reasons, and is performed only at the hospital. After the 18th week, abortion is permitted under special circumstances only. Each year, around 15 000 abortions are performed;⁹⁸ this service is “completely integrated” into Norwegian health care system and it is financed as every other medical procedure. The politics is not engaged in the issue of abortion; it is hardly a topic of a discussion in medical circles and in the public. The public attitude towards abortion had changed over the years; in 1974, 47% of the population supported abortion on request, while in 2010, it got a support of 76%.⁹⁹ Health care workers included in the provision of abortion service are not stigmatized by their colleagues nor bullied by the activists who are against abortion.

Norway has strict regulations on conscience-based refusal and physicians are obliged to refer women to abortion, even if they have moral reserves. Apart from abortion, the only service that physicians can refuse to perform is medically assisted fertilization. They cannot refuse to prescribe contraception on grounds of conscience since it does not have an abortive effect.¹⁰⁰

A complete regulatory and supervisory framework has been established in order to guarantee the availability of services. It is the duty of the management of the institution to inform the regional administration on the number of different categories of health personnel excluded from performing abortion due to conscience-based refusal.¹⁰¹

Employers may decide not to hire a person who conscientiously refuses to provide certain services, and competition for work position may specify performing abortion as a condition. In recent years, it is being discussed whether the general medical practitioners can deny to provide woman the reference to abortion. Opponents of conscience-based refusal state that, in this way, the right of women to abortion is endangered as it can be perceived as a moral condemnation. On the other hand, the advocates argue that there should be tolerance for a minority who has deeply asserted beliefs on this issue and that conscience-based refusal can exercised in a way that protects the patient’s right to abortion.¹⁰²

⁹⁸ Kibsgaard Nordberg E. M., Skirbekk H., Magelssen M., 2014, Conscientious objection to referrals for abortion: pragmatic solution or threat to women’s rights?, *BMC Med Ethics*, 2014, 15:15.

⁹⁹ Ibid

¹⁰⁰ Genethique, 2016, IUD: First case in Norway regarding the right to conscientious objection. Available at: <http://www.genethique.org/en/iud-first-case-norway-regarding-right-conscientious-objection-66261.html#.WSLaDevylU> (Accessed on December 6, 2016)

¹⁰¹ Regulations for the Implementation of the Act dated 13 June 1995 no. 50 concerning Termination of 31 Pregnancy, with Amendments in the Act dated 16 June 1978, no. 66, §20 (Norway).

¹⁰² Ibid

There is no place for conscience-based refusal in medicine

Some countries in Europe¹⁰³ do not allow conscience-based refusal in medicine.¹⁰⁴ A key feature common to Iceland, Sweden, and Finland is the mandatory training in abortion care which has a significantly positive effect for everyone involved: It guarantees women that all providers can and will perform abortions under the legal framework, ensuring quick and non-judgmental access. It means that the workload will be shared fairly, and no-one can opt out of part of their professional duties or be judged because of providing abortion care. Objectors are informed in advance of the incompatibility between their beliefs and the professional duties of a gynecologist and can choose another specialty in time. The key to disallowing conscience objection requires a strong prior acceptance of women's rights on the part of government and society, including their right to comprehensive health care.¹⁰⁵

In Sweden, health care providers who refuse to perform abortion services may be fined and imprisoned. However, out of respect for women who request abortion, there is a suggestion that the persons who oppose to execute these services are not assigned to them, and the hospital managers assign the job to those physicians who are willing to perform abortion. Therefore, health care providers which refuse to perform particular services may experience difficulties in finding a job. A midwife from Sweden addressed the European Court for Human Rights since three clinics refused to hire her because she is refusing to participate in termination of pregnancy.¹⁰⁶ The European Committee on Social Rights recently dismissed an appeal filed by the Federation of Catholic Families in Europe (FAFCE) v. Sweden, claiming that health care professionals have the right to deny the abortion service on the grounds of personal conscience.¹⁰⁷

Some physicians in Croatia also do not approve conscience-based refusal in medicine. Doc. dr. sc. Dubravko Lepušić, a gynecologist, holds that "there is no place for conscience-based refusal in medicine".¹⁰⁸ People who refuse to provide services in reproductive medicine are most often against the introduction of the criteria for establishing the authenticity of their

¹⁰³Sweden, Finland, Bulgaria, Czech Republic and Iceland.

¹⁰⁴Arthur, J., 2014, Why We Need to Ban „Conscientious Objection“ in Reproductive Health Care. Available at: <http://rhrealitycheck.org/article/2014/05/14/why-we-need-to-ban-conscientious-objection-in-reproductive-health-care/> (Accessed on December 15, 2016).

¹⁰⁵Fiala, C., Gemzell Danielsson, K., Heikinheimo, O., Guðmundsson J., Arthur J. 2016. Yes we can! Successful examples of disallowing 'conscientious objection' in reproductive health care, *The European Journal of Contraception & Reproductive Health Care*, 21:3, 201-206.

¹⁰⁶The Courts of appeal in Sweden, in case of Grimmark v. Landstinget and Jönköpings Län made a decision that the government can force the medical staff to perform and participate in the termination of pregnancy procedure or they can leave the profession.

¹⁰⁷FAVCE vs Sweden, complaint No. 99/2013 (Decision on the merits).

¹⁰⁸Grozđanić, D., 2016, Dubravko Lepušić: They want to bring us back to the Middle Ages. Available at: <http://www.portalnovosti.com/dubravko-lepui-ele-nas-vratiti-u-srednji-vijek> (Accessed on December 8, 2016)

conscientious convictions. They are calling upon the right to privacy, especially on the right to religious freedom. It is interesting to see that those same objectors consider necessary and opportune to question and evaluate women's reasons for abortion. Indeed, many would not mind to introduce such procedure into laws and regulations, regardless to which extent this violates the woman's right to the same privacy and autonomy.¹⁰⁹

Dr.sc. Jasenka Grujić, also a gynecologist, considers that “not participating in standardized procedures such as abortion and contraception is not conscience-based refusal but unprofessional behavior, “dishonest disobedience” (called by Dr. Fiala) and should be treated as any ethical misdemeanor, professional negligence or inability to perform duties.”

Dr. sc. Gorjana Gjurić considers that the solution can be found in more precise legislation, data collection and evaluation of the law enforcement effect. If conscience-based refusal registers were introduced, it would be easy to ascertain if a physician who refuses to perform abortion on grounds of conscience in a public institution performs abortion in private practice, while women would have information on which physician to choose in a timely manner.¹¹⁰

They have started the Initiative of Doctors to Regulate the Right of Conscience-Based Refusal in Medicine in 2014 and they are insisting on solving the problem of insufficiently regulated conscience-based refusal that lead to a situation in which authorized public health institutions suspend abortion. The Initiative developed proposal¹¹¹ for the regulation of the right of health care practitioners not to provide certain medical services for reasons of conscience, which includes the adoption of a special law which will regulate the right to exercise conscientious refusal in the overall health care activity in a comprehensive and uniformed manner. They also require the introduction of the Register of Conscientious Objectors and propose procedures for professional associations, medical education institutions and health care institutions authorized to perform legal abortions.

¹⁰⁹Srdoč, S., 2015, People who deny service based on claims of personal conscience are oppressing divorced women, lesbians... Available at: <https://www.tportal.hr/vijesti/clanak/prizivaci-savjesti-zakidaju-i-rastavljene-zene-lezbijke-20141217> (Accessed on October 14, 2016)

¹¹⁰CESI and The Initiative of Physicians, round table: Abortion law for the 21st century, Novinarski dom, May 9, 2017. Available at: <http://www.cesi.hr/hr/novosti/1821-novi-zakon-treba-osigurati-da-zene-slobodno-odgovorno-i-samostalno-st-centuryodlucuju-o-ra/> (Accessed on May 10, 2017)

¹¹¹Gjurić, G., 2016., Proposals to fully regulate the right of conscience-based refusal. Available at: <http://www.roda.hr/udrugaprogrami/trudnoca-i-porod/prijedlozi-za-cjelovito-reguliranje-prava-na-priziv-savjesti.html> (Accessed on September 14, 2016)

Conclusion and recommendations

The right to conscience-based refusal is not absolute but, like most other rights, it is limited to the extent prescribed by laws that are necessary in a democratic society in the interests of public security, protection of public order, health, morals or for the protection of the rights and freedoms of other people. Conscience-based refusal cannot be interpreted too broad and in a way that would lead to disabling the timely provision of health services, that is, to abuse the implementation of this right. It must always be taken into account to provide the health service and that the patient does not suffer any consequences. If this is not possible, the right of conscience-based refusal cannot be realized.

In its Concluding remarks¹¹² on the fourth and fifth periodic reports for the Republic of Croatia - *about the application of the Convention*, the CEDAW Committee, among other things, invites the state:

“To ensure that the exercise of conscientious objection does not impede women’s effective access to reproductive health-care services, especially abortion and post-abortion care and contraceptives;

To ensure universal coverage of abortion and modern contraception within the Croatian Health Insurance Fund.

To ensure the availability and accessibility of modern forms of contraception and reproductive services to all women, including disadvantaged groups of women.”

After his visit to the Republic of Croatia in the end of 2016, the UN’s Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health expressed concern about the implementation of the law that regulate abortion issue, which is “faced with some challenges” such as hospitals denial of abortion on the ground of conscientious objection. In addition, the use, availability and accessibility of modern contraception and reproductive services continue to be low and excluded from the services that are covered by the Croatian Health Insurance.” He stressed that sexual and reproductive health rights are human rights, therefore “regressive measures preventing access to safe abortion and contraceptives, and hindering access to age-appropriate comprehensive sexuality education, may amount to human rights violations.”¹¹³ In his

¹¹²CEDAW Committee: Recommendations (quote from the Concluding remarks on the fourth and fifth periodic reports for Croatia - CEDAW/C/HRV/CO/4-5). Available at: <https://ravnopravnost.gov.hr/UserDocsImages/arhiva/images/pdf/CEDAW%20Zaklju%C4%8Dne%20primjedbe%20o%204.%20i%205.%20periodi%C4%8Dnom%20izvje%C5%A1%C4%87u%20za%20Hrvatsku%2028.7.2015.pdf> (Accessed on September 9, 2016)

¹¹³Special Rapporteur on Everyone’s Right to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Visit to Croatia, Zagreb, November 28 – December 6, 2016, Preliminary observations. Available at:

report¹¹⁴ in 2011, the Special Rapporteur especially emphasized the obligation of states to remove all obstacles, including laws and conscience-based refusal practice which are enabling personal decision about termination of pregnancy. In order to fulfill its obligations related to the right to health, he recommends that the states should "ensure that conscience-based refusal is well-defined and well-regulated, that alternative services are available and that the patient is referred to other service providers."

Conscience-based refusal issue is not just an individual act, but also the question of profession and a social issue. It should be regulated in a way that it does not impair other human rights, that it does not prevent the availability of legal health care and provoke discrimination. Professional standards and moral conscience primarily dictates the physician to act for the benefit of the patient, the patient should decide what is best for him/her. The main characteristic of the relationship is the confidence that physicians, whenever their help is needed, will do whatever the medicine knows and can provide for the patient. Medical professionalism requires practicing medicine that is based on scientific facts, it respects the patient's autonomy and contribute to the quality of life and health of every person and the entire community. If they, due to conscience-based refusal, deny performing standard procedures, including abortion, sterilization, and provision of contraceptives, physicians have to provide potential patients with timely information about their decision, without imposing their own views. Information on reproductive health service that he/she refuses to do must be based on scientific facts, accurate and unbiased information so that the patient can make an informed decision. We must not allow patients to carry the full burden of refusal to provide health care services, and therefore an adequate institutional framework is necessary.¹¹⁵

FIGO¹¹⁶, while establishing ethical standards in gynecology, recognized that stereotype attitudes and negative beliefs of health care workers about women are affecting the access to services and lead to damage because pregnant women are being denied care which is medically indicated for treatment of conditions that are not related to pregnancy since those treatments can jeopardize survival and wellbeing of the fetus. The stereotype of women's vulnerability and emotionalism may lead a healthcare professional to withhold information

[https://ravnopravnost.gov.hr/UserDocImages/arhiva/preuzimanje/dokumenti/un/Preliminarna%20opa%C5%BEanja %20Pos ebni%20izvjestitelj%20UN-a%20o%20pravu%20svih%20osoba%20na%20u%C5%BEivanje%20najvi%C5%A1ih%20standarda%20tjelesnog%20i%20mentalnog%20zdravlja.pdf](https://ravnopravnost.gov.hr/UserDocImages/arhiva/preuzimanje/dokumenti/un/Preliminarna%20opa%C5%BEanja%20Pos ebni%20izvjestitelj%20UN-a%20o%20pravu%20svih%20osoba%20na%20u%C5%BEivanje%20najvi%C5%A1ih%20standarda%20tjelesnog%20i%20mentalnog%20zdravlja.pdf) (Accessed on January 12, 2017)

¹¹⁴ UN Report of the Special Rapporteur on Everyone's Right to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Interim report, Anand Grover, August 3, 2011, UN Doc. A/66/254. 2011.

¹¹⁵ Dressers R., 2005, Professionals, conformity and conscience, The Hastings Center Report 35(6):9-10 · November 2005 with 91 Reads

¹¹⁶ FIGO, 2012, Ethical Issues in Obstetrics and Gynecology. See: HARMFUL STEREOTYPING OF WOMEN IN HEALTH CARE.

necessary for a woman's informed consent because it may be distressing or could provoke anxiety. Moreover, FIGO is warning that health care workers should be aware of, and resist, their own and others' tendencies and stereotypes about women as those who seek their social and personal fulfillment primarily in motherhood, who are prone to sacrifice themselves by putting the interest of the fetus in front of theirs, who are emotional, vulnerable, seeking their principal personal or social fulfillment in motherhood, or lacking sound moral judgment.

In the Republic of Croatia, the procedure of providing information on abortion, gynecological examinations of women who seek abortion, nor the procedure of refusing to perform particular services due to conscience-based refusal is not prescribed by the Ministry of Health, but varies depending on a particular hospital. Complete autonomy of health care institutions regarding abortion service, including the price of abortion, and lack of monitoring by the competent Ministry represents public-health issue because it results in limited availability as well as legal and medical uncertainty for women.¹¹⁷ Furthermore, the data about the exact number of physicians who refuse to perform abortion is not available, there is no registry of conscientious objectors in hospitals, as nor the data on whether they are executing their legal obligations of informing the patients, referring them to other available physicians who will not refuse to perform the procedure, and are they providing medical help in the case of emergency.

Useful suggestions for standardization of practice and legal regulative in the implementation of conscience-based refusal legal principle can be found in published scientific and professional papers, jurisprudence and theory, public debates and standing points of interest groups.¹¹⁸

Considering international standards and good practices in other countries, the Republic of Croatia should do the following:

- ❖ It is necessary to adopt and implement standards that would clearly articulate obligations of states which guarantees that conscience-based refusal does not prevent the availability and accessibility of health care services, to ensure supervision and monitoring of practice and to seek for responsibility of all those that do not obey the

¹¹⁷Gender Equality Ombudsperson, 2014, Research „Practice of Health Institutions in Croatia Regarding Procurement of Availability of Legally Induced Abortion“. Available at: http://www.prs.hr/attachments/article/1555/04_ISTRA%C5%BDIVANJE%20-%20Rad%20studentskih%20pravobranitelja.pdf (Accessed on September 24, 2016).

¹¹⁸Čizmić, J., 2016, The Right of Health Care Workers to Conscience-Based Refusal, Book of proceedings of the Faculty of Law in Rijeka (1991), volume 37, No. 1, 753-786.

standards. The compliance with the law and the objection must be performed in a responsible way and provision of services established by the law must be guaranteed to all people at all times.

- ❖ For this purpose, it is necessary to change and supplement the existing regulations in a way to arrange efficiency, transparency, unique system of standardized quality, safety and availability of health care protection regarding refusal to perform relevant standardized medical procedures due to the exercise of conscientious.¹¹⁹
- ❖ It is necessary to determine that only individuals have the right to exercise conscientious refusal. Only individuals have conscience, not legal entities or other collective bodies. Health institutions within public health care cannot refuse the provision of legally prescribed health care services; they are obliged to hire enough staff which is available and ready to provide all services in the scope of reproductive medicine. They are obliged to organize their activities in such manner that, in case of conscience-based refusal by their staff, it does not question the possibility of providing services and degradation of service quality. It has to be permissible for employers to require a willingness to provide abortion services as part of job descriptions.
- ❖ It is important to ensure the ability to check the consistency of conscientious objectors in terms of their complete action in medical profession, so that it does not happen that they are performing procedures in private practice that they are refusing to perform in public health system.
- ❖ It is necessary to specify for which components of care the conscience-based refusal is inadmissible and regulate the procedures of refusing to provide particular health care services on the ground of conscience. Furthermore, hospitals have to possess required information about employees who refuse to provide relevant services for reasons of conscience. Conscience-based refusal must be specific and refer to concrete actions, and it is also necessary to establish alternative activities in order to prevent major workload of providers who are performing their duty.

¹¹⁹David - Association of Citizens for Protection of Human Rights, Proposals for the full regulation of the right to exercise conscientious refusal right in medicine / health care profession, the Initiative of Doctors to Regulate the Right of Conscience-Based Refusal and the CESI - Center for Education, Counseling and Research, Round Table: "Conscience-Based Refusal in Medicine", Zagreb, Novinarski dom, January 21, 2015. Available at: <http://david-udruga.hr/novosti/2015/02/11/prijedlozi-za-cjelovito-reguliranje-pravana-priziv-savjesti-u-medicini-zdravstvenoj-djelatnosti/>; and Gjurić, G., Conscience-based refusal and conscience suasion in the war on abortion. Available at: <http://www.libela.org/sa-stavom/5621-prigovorsavjesti-i-nagovor-savjesti-u-ratu-oko-pobacaja/>. (Accessed on December 16, 2016)

- ❖ It is necessary to specify for which components of care conscience-based refusal is inadmissible, which includes the provision of information and referral to other physician who will provide the service. Conscience-based refusal under no circumstances cannot be allowed in situations when life or physical/mental health of the patient is endangered. Conscientious refusal can be claimed only by the persons directly involved in provision of services. Furthermore, it is necessary to define precisely what direct involvement means and ensure that the person is involved in provision of care before and after the procedure.
- ❖ It is necessary to determine sanctions for medical institutions which, due to conscience-based refusal by their employees, are not providing health care services determined by the law as well as for individuals who do not respect prescribed standards.
- ❖ In case of conscience-based refusal, service beneficiaries should be enabled to get timely service of other medical practitioner without additional inconveniences and costs. Apart from that, women's dignity and independence in decision-making must be respected.
- ❖ Health care providers must impart scientifically accurate and unbiased information so that patients can make informed decisions about their health care.
- ❖ Standard curriculum and teaching programs for health care workers must definitely have special attention in a way to incorporate information about humane way of notifying patient about professionals' refusals to provide reproductive health services. Furthermore, students of medicine cannot object to learning to perform procedures and service that they may need to provide in case of emergency.

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Nova cesta 4, 10 000 Zagreb
Tel: +385 (0)1 24 22 800
GSM: +385 (0)95 903 5442
Fax: +385 (0)1 24 22 801
E-mail: cesi@cesi.hr
Web: www.cesi.hr
FB: CentarCESI
Soundcloud: CentarCESI
Youtube: Ravnopravnost